Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of:

Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	**CS Dkt. No. 97-248**
	)	**RM No. 9097**
Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage	)	

COMMENTS OF SNET PERSONAL VISION, INC.

SNET Personal Vision, Inc. ("Personal Vision") has an interest in this proceeding to strengthen procedures for resolving complaints alleging violation of the access to programming rules since the purpose of those rules is to prevent unfair denial of satellite-delivered programming to companies like Personal Vision who compete with entrenched cable operators.[1/] In September 1996, Personal Vision was awarded a franchise to provide cable TV service to about 1.3 million homes in Connecticut in competition with existing cable franchisees, and since that time it has initiated commercial cable service in the towns of Fairfield, West Hartford, Farmington, Norwalk, and New Britain.[2/]

1/ Just last month, the FCC found no relevant change in the core facts that led to adoption of the access to programming rules: the incumbent cable industry still has substantial market power in the multi-channel video programming market and there continues to be substantial common ownership between incumbent cable operators and cable program suppliers. See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fourth Annual Report, FCC 97-423 (rel. Jan. 13, 1998).

2/ The network infrastructure that Personal Vision uses to provide cable TV service has been deployed in small parts of several other communities (Bridgeport, Westport, Greenwich, Easton, Bloomfield, Hartford, Newington, Berlin and Avon), but the company does not yet
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DISCUSSION

The FCC has asked for comments about three different ways in which to strengthen its procedures for resolving complaints alleging a violation of the access to programming rules. As shown below, Personal Vision supports the adoption of rules which would strengthen existing procedures in each of those three ways.

First, the agency should adopt a rule which provides that a final order on a complaint alleging violation of the access to programming rules will be made by a date certain unless all parties to the complaint proceeding agree to delay the order. Ameritech has proposed a rule requiring a final order within 90 days after the date on which the complaint is filed in a case without discovery and within 150 days of the filing date in a case with discovery. Personal Vision supports adoption of that rule.

A rule providing for a final decision on the merits within the time frames proposed by Ameritech is desirable because it would reduce the lost opportunity costs that result from delayed adjudication of access to programming complaints by shortening the average time to process such complaints by more than three months.[3/] A rule specifying deadlines for resolving such

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actively market service in these other communities. Personal Vision is a wholly owned subsidiary of Southern New England Telecommunications Corp. Another wholly owned subsidiary of that company, The Southern New England Telephone Company, provides local and long distance telephone service in Connecticut. Personal Vision's parent also is one of the five owners of the americast® venture. That venture was established to acquire, package, develop, and market programming services over video delivery systems that compete with incumbent cable operators.

3/ Under the FCC's analysis, the average time under existing procedures for processing complaints in which the FCC renders a decision on the merits is 8.1 months. Notice at ¶37. Under the Ameritech proposal, the average processing time would be less five months given that
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complaints also is desirable because it would discourage violations of the access to programming rules by sending a message that the FCC is committed to strong enforcement.

The Commission speculates that the proposed 90/150-day deadline for rendering a final decision on such complaints may not provide complainants with enough time to make their case.[4/] But the agency's fear apparently is misplaced since the intended beneficiaries of the access to programming rules are the primary advocate for establishing processing deadlines like those which Ameritech has proposed.

Nor should the agency decline to adopt the 90/150-day processing deadline on the ground that it may not give the FCC enough time to resolve factually complex complaints alleging price discrimination.[5/] Congress has required the Commission to resolve a variety of matters in which complex facts are under dispute in similar amounts of time,[6/] and the agency has shown that it is able to meet those deadlines.[7/]

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all complaints would be resolved within five months and some (i.e., those not involving discovery) would be resolved within three months.

4/ Notice at ¶39.

5/ Id.

6/ See, e.g., Sections 614 and 615 of the Communications Act (requiring that complaints alleging failure to carry local broadcast stations be resolved within 120 days of filing); Section 271 of the Act (requiring that applications by Bell companies to provide interLATA service be resolved within 90 days of filing); Section 275 of the Act (requiring that certain complaints alleging material financial harm to providers of alarm monitoring service be resolved within 120 days of filing).

7/ See, e.g., Applic. of BellSouth Corp., FCC 97-418 (rel. Dec. 24, 1997) (acting on BellSouth's application under Sec. 271 to provide interLATA service in South Carolina by the 90-day statutory deadline); Applic. of Ameritech Michigan, FCC 97-298 (rel. Aug. 19, 1997) (acting on Ameritech's application under Sec. 271 to provide interLATA service in Michigan by the 90-day deadline).

Second, the Commission should strengthen its discovery procedures in the specific ways that Ameritech proposes in the comments it is filing today. In those comments, Ameritech recognizes the Commission's reluctance to grant an automatic discovery right in all such proceedings by proposing an alternative to an automatic discovery right.[8/] First, the Commission would require the defendant to append to its answer any document upon which it intends to rely in establishing a defense and any document necessarily implicated by allegations in the complaint. Second, the FCC would set strong deadlines in situations where one or more parties ask the FCC to permit discovery. These deadlines would define the timing of (i) all discovery requests, (ii) the FCC's decision about whether to grant those requests, and (iii) the filing of briefs, evidentiary materials, and fact stipulations in situations where discovery is allowed. Adopting these rules will provide the FCC with a better record upon which to base decisions on access to programming complaints and will permit the agency to make such decisions within 150 days of the filing of such complaints.

Finally, the Commission should impose strong economic penalties on those who violate the access to programming rules. The existence of tough economic penalties will provide what is perhaps the single most effective incentive to comply with the access to programming rules, and it should reduce the number of complaints alleging violation of those rules.

The Commission's arsenal of economic penalties should include both an ability to levy monetary forfeitures and an ability to award damages, and the agency should make plain that it will not hesitate to use both tools. A forfeiture should be levied in each instance where the violation is "willful" or "repeated" since Section 503 of the Act explicitly authorizes the levying

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[8/] Notice. at ¶44.

of forfeitures in both of those situations. Damages should be awarded whenever a complainant has been injured without regard to whether the violation was willful or repeated. In cases where a violation is both (i) willful or repeated and (ii) injures the complainant, the violator would be subject to both a forfeiture and a damages award. Moreover, the Commission should permit bifurcated resolution of liability and damages by using the same procedure that applies in Section 1.722(b) of the Rules for resolving complaints against common carriers. Under that procedure, a complainant would have a right either to adjudicate the amount of damages as part of the complaint proceeding alleging violation of the access to programming rules or obtain an order on damages by filing a supplemental complaint after the Commission issues an order which finds that a violation occurred.

Not only has the FCC requested comments on ways to strengthen the procedures for resolving access to programming complaints, it also has asked whether it should resolve such complaints when the programming is transmitted terrestrially rather than by satellite.[9/] Although Section 628 expressly authorizes complaints only when the programming is transmitted by satellite, no public policy is served by refusing to resolve complaints when programming is delivered terrestrially. Moreover, Sections 4(i) and 303(r) of the Act may authorize the Commission to resolve such complaints if the programming is delivered terrestrially in order to evade Section 628 since these provisions authorize the agency to issue orders when necessary to execute functions delegated under the Act. At the very least, the Commission should promptly recommend to Congress that it amend Section 628 in order to bar denial of access to programming without regard to the technology used to distribute the programming.

9/ Id. at ¶51.

CONCLUSION

The Commission should strengthen its procedures for resolving complaints alleging violation of the access to programming rules by (1) establishing strict deadlines for resolving such complaints, (2) strengthening discovery procedures, and (3) adopting tougher economic penalties when someone violates these rules. It also should recommend to Congress that Section 628 be amended in order to permit the agency to resolve all access to programming complaints without regard to the technology used to distribute the programming. Pending the enactment of such legislation, it should resolve complaints alleging denial of access to programming which is delivered terrestrially if the complainant shows that the defendant distributes the programming terrestrially in order to evade Section 628.

SNET PERSONAL VISION, INC.

By: _____

Rodney L. Joyce
Ginsburg, Feldman and Bress,
Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 637-9005

Madelyn DeMatteo
Dori N. Bye
SNET Personal Vision, Inc.
555 Long Wharf Drive, Fifth Floor
New Haven, Connecticut 06511

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